

I.A. No.01 of 2020
IN
W.P. (Crl) No. 01 of 2020
Krishna Kumari Chettri & Anr.
Vs.
State of Sikkim & Ors.

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Extraordinary Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

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1. Krishna Kumari Chettri,
W/o Bishnu Lall Chettri,
R/o Rorathang Bazar,
East Sikkim.
2. Sanjay Chettri,
S/o Bishnu Lall Chettri,
R/o Rorathang Bazar,
East Sikkim. Petitioners

versus

1. State of Sikkim
Represented by and through
The Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.
2. District Collector (East)/Chairperson,
District Disaster Management Authority,
District Collectorate Office,
Gangtok, East Sikkim.
3. Sub Divisional Magistrate,
Government of Sikkim,
Rangpo, East Sikkim.
4. The Station House Officer, (SHO),
Rangpo, Police Station,
Rangpo, East Sikkim. Respondents

**Application praying for direction to respondent
nos. 2 to 4 for unsealing the gym of the petitioner
no.1.**

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Appearance:

Mr. Sabyasachi Chatterjee, Mr. Navin Kiran Pradhan and Ms. Bina Rai, Advocates for the Appellants.

Mr. Sudesh Joshi, Additional Advocate General for the Respondents.

Date of Order: 17.09.2020

(O R A L) O R D E R

Bhaskar Raj Pradhan, J.

1. On 29.08.2020 after hearing the learned counsel for the petitioners, as well as the learned Additional Advocate General for the respondents, notice was issued in the writ petition as well as in the I.A. No.1/2020, returnable on 17.09.2020.

2. Mr. Sabyasachi Chatterjee, learned counsel for the petitioners pressed for interim orders as prayed for in I.A. No.1/2020 today.

3. Mr Chatterjee has taken this Court through the impugned order dated 23.05.2020 passed by the District Magistrate, respondent no.2 herein, which is quoted below:

**“GOVERNMENT OF SIKKIM
OFFICE OF THE DISTRICT COLLECTOR, EAST
DISTRICT ADMINISTRATIVE CENTRE, SICHEY
GANGTOK-SIKKIM-737101**

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No.1857/DC(E)/2020

Dated: 23/05/2020

ORDER

(U/S 51 of the Disaster Management Act, 2005)

Whereas, the Ministry of Home Affairs, Government of India vide order no 40-3/2020-DM-1 (A) dated 17th May, 2020 has extended the lockdown measures till 31st May, 2020 to contain the spread COVID-19 in the country.

Whereas, the Chief Secretary, Government of Sikkim vide Order No. 09/Home/2020 dated 17/5/2020 has issued new guidelines for strict implementation in the State.

Whereas, prohibitory orders vide order no. 1854/DC (E)/2020 dated 19/05/2020 and directives vide order No. 1828/DC(E)/2020 dated 19/04/2020 were issued by the undersigned to be strictly observed in East Sikkim district during the period of lockdown.

Whereas, the following shop was found violating the aforementioned orders and had not complied with the Standard Operating Procedure for Social Distancing for Offices, Workplaces, Factories and Establishments issued vide order no. 40-3/2020-DM-I (A) dated 17th May, 2020 by the Ministry of Home Affairs, Government of India:

1. Body Vibes Gym, Rangpo Bazaar.

Therefore, in exercise of the power conferred under section 51 (b) of the Disaster Management Act, 2005 read with section 3 (b) of the Sikkim Public Health and Safety (COVID -19) Regulations, 2020 the aforementioned shop is hereby sealed till further orders.

Since, the present circumstances do not admit serving of this order to concerned persons information regarding the same has been intimated telephonically and the matter shall be heard after the completion of the lockdown period.

Given under my hand and seal this 23rd May, 2020.

Sd/-
Raj Yadev, IAS
District Magistrate cum Chairperson,
District Disaster Management Authority,
East Sikkim.

Copy to:

1. The Superintendent of Police, East- for information and necessary action
2. Sub Divisional Magistrates/Rangpo- for

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information
3. *The SHO, Rangpo PS- for information and necessary action.”*

4. Mr. Sudesh Joshi, learned Additional Advocate General, submits that he needs further time to file response to the application because of the present covid-19 situation and the Additional Advocate General himself being in isolation.

5. From the impugned order it is clear that the respondent no.2 has sought to exercise powers under section 51(b) of the Disaster Management Act, 2005 (hereinafter “the Act”) read with Regulation 3 (2) of the Sikkim Public Health and Safety (COVID-19) Regulations, 2020 (hereinafter “the COVID-19 Regulations”) and by doing so directed that the Body Vibes Gym, Rangpo Bazar, be sealed till further orders. It is also seen that the impugned order was not even served upon the petitioners but only telephonically intimated.

6. Section 51 (b) of the Act is quoted below:

“51. Punishment for obstruction, etc.- (1)
Whoever, without reasonable cause-

(a)

(b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive

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Committee or the District Authority under this Act,

shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.”

7. Regulation 3 of the COVID-19 Regulations is quoted below:

“Restrictions and Offences 3. (1) *It shall be compulsory to wear face cover or mask in all public places and workplaces.*

(2) *All persons in charge of public places, commercial establishment and transport (whether commercial) or otherwise shall ensure social distancing as per the guidelines issued by the Competent Authority.*

(3) *Violation by any member of public of any guidelines/order/Notification/advisory issued by the Competent Authority in respect of Social Distancing shall be an offence.*

(4) *Spitting in public places shall be strictly prohibited.”*

[emphasis supplied]

8. Neither section 51(b) of the Act nor Regulation 3

(2) of the COVID-19 Regulations seem to give any power to the respondent no.2 to seal the premises.

The learned Additional Advocate General fairly

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submits that it is so. He however, submits that perhaps the power exercised by the respondent no.2 was under Section 144 of the Code of Criminal Procedure (Cr.P.C.) as at the relevant time it had in fact been imposed. He further submits that even it was so, the 2 months period contemplated in Section 144 Cr.P.C. is far over and there is nothing stopping the petitioners to reopen the gym, if it is permissible.

9. Evidently, *prima facie*, the respondent no.2 has not passed the impugned order under the provision of Section 144 Cr.P.C. Otherwise, the respondent no.2 would have said so in the impugned order dated 23.05.2020.

10. Mr. Chatterjee has also taken this Court to the guidelines issued by the Government of India, Ministry of Home Affairs, dated 03.08.2020, which provides that gymnasium in containment zone shall remain closed for public and only those outside containment zone will be allowed to open up and the order dated 19.06.2020 issued by the respondent no.1 which provides that Gymnasiums are allowed to operate from 10.06.2020 onwards with the condition that the occupancy at any given time is only 50% of

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the total capacity and the timings shall be from 7.00 am till 6.00 p.m.

11. Having considered the rival submissions of the learned counsel this Court is of the view that the impugned order dated 23.05.2020 shall remain stayed till further orders. Learned Additional Advocate General is permitted to file a response to the interim application within three weeks from today. Should the respondents desire any variance of the order passed today, they are free to file their response earlier and move for appropriate orders.

12. The operation of the gym shall, however, be subject to the rules and regulations that may be issued by the Government of India as well as the State Government from time to time to contain the spread of COVID-19 and if it is permissible. The petitioners shall strictly comply with the regulations and all norms that are required to be followed to contain the spread of COVID-19 and if they violate any of the rules or regulations issued by the Government or provisions of any applicable laws, the authorities under the law, are free to take action, as per law.

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13. The observations made in this order is solely for the purpose of deciding the interim protection sought for and shall not affect the final decision in the writ petition.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**
to/